# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**RSA No.374 of 2006**

**Decided on : November 20, 2006**

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**Dole Ram and another** **...Appellants.**

***VERSUS***

**Rot Ram** **...Respondent.**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

***Whether approved for reporting?***

**For the Appellants : Mr. B.K. Malhotra, Advocate.**

**For the Respondent : Mr. Sanjeev Kuthiala, Advocate.**

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**Surjit Singh, Judge (Oral)**

Heard.

***2.*** Appellants-plaintiffs filed a suit claiming that they are the sons of respondent-defendant Rot Ram and have a right in the ancestral property in the hands of said Lot Ram being coparceners and sought the issuance of permanent prohibitory injunction restraining the respondent-defendant from alienating the suit property, which was allegedly ancestral and coparcenery property.

***3.*** The trial Court decreed the suit holding the appellants to be the sons of Rot Ram and held that the suit property was coparcenery and ancestral property. Respondent-defendant went in appeal to the Court of District Judge. Learned District Judge has accepted the appeal holding that neither the appellants are the sons

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***Whether the reporters of the local papers may be allowed to see the Judgment?***

of the respondent-defendant nor the property is ancestral/ coparcenery.

***4.*** One of the contentions raised by the appellants is that they had made an application before the trial court for leading additional evidence in the form of pedigree table and entries in the Panchayat record, showing that the appellants are the sons of the respondent-defendant, but that application was dismissed with the observation that the record was in possession of the appellants-plaintiffs and it ought to have been produced at the earliest available opportunity. The learned counsel says that the record was public record and the prayer ought to have been granted, because there was hardly any chance of the record being manipulated or being not genuine. Another contention raised by the learned counsel for the appellants-plaintiffs is that no specific issue was framed by the trial court whether the appellants-plaintiffs were the sons of Rot Ram, though in the written statement Rot Ram had denied that the appellants were his sons.

***5.*** After hearing the counsel for the respondent-defendant in reply to the aforesaid submissions, I am of the view that the appellants-plaintiffs have been materially prejudiced on account of the non-framing of the issue pertaining to their plea that they are the sons of respondent Rot Ram and also on account of the trial Court not permitting them to lead documentary evidence, which was in the nature of public record, to prove their plea that they are the sons of Rot Ram.

***6.*** Consequently, the appeal is accepted. The impugned judgment and decree of the first Appellate Court are set aside. The judgment and decree of the trial Court are also set aside. The case is remanded to the trial Court, with direction to decide the same afresh, after framing additional issue covering the plea of the appellants-plaintiffs that they are the sons of defendant Rot Ram and thereafter allowing the parties to lead evidence in respect of that issue. It is clarified that while leading evidence on that issue, the appellants-plaintiffs will be at liberty to lead that evidence also which they wanted to lead by way of additional evidence in the trial Court but were not permitted to do. Parties, through their counsel, are directed to appear before the trial Court on 21st December, 2006.

**CMPs No.711 & 760 of 2006**

Infructuous.

**November 20, 2006(sd)** **( Surjit Singh ), J.**